

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas

ENTERED

February 18, 2022

Nathan Ochsner, Clerk

CHUONG DUONG TONG,
Petitioner,

v.

BOBBY LUMPKIN,
Respondent.

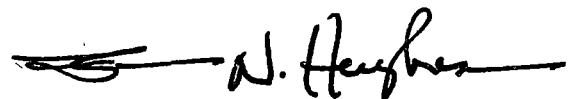
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Civil Action H-10-CV-2355

ORDER

This case is on remand from the Fifth Circuit. The Court granted investigative funding (182) and ordered briefing on Tong's *Wiggins* claim (190). Tong now moves for leave to take discovery. Lumpkin opposes the motion.

Lumpkin's arguments that the *Wiggins* claim is procedurally defaulted and that the Court cannot consider new evidence were previously addressed. (182 at 2-6) Lumpkin's argument that the Court's previous denial of relief on Tong's ineffective assistance of counsel claim has not been vacated is not on point; the Fifth Circuit remanded the case for further development of Tong's *Wiggins* claim (187) and the discovery Tong now seeks is relevant to that claim. Lumpkin's argument on the merits of the claim is premature. Lumpkin's argument that the discovery request is premature is incorrect. Rule 6 allows discovery for good cause and Tong has shown that he has a substantial *Wiggins* claim and his requested discovery will help him develop that claim. Tong's motion is granted (191).



Lynn N. Hughes
United States District Court

Houston, Texas
February 18, 2022